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8 Attorneys for
9 DEL MAR DATATRAC, INC AND
10 FISERV, INC.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 AMERICAN RESIDENTIAL EQUITIES,
12 LLC,

13 Plaintiff,

14 vs.

15 DEL MAR DATATRAC, INC and
16 FISERV, INC.,

17 Defendants.

No.: 08-cv-00545-BEN (POR)

**JOINT MOTION TO EXTEND
BRIEFING SCHEDULE FOR
DEFENDANTS' MOTION AND
PARTIAL MOTION TO DISMISS
COMPLAINT; DECLARATION OF
CHRISTOPHER O. RIVAS IN
SUPPORT THEREOF**

[Order Submitted Concurrently
Herewith]

The Honorable Roger T. Benitez

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

1 Defendants Del Mar DataTrac, Inc and Fiserv, Inc. (collectively "Defendants"),
2 with the consent of plaintiff American Residential Equities, LLC, hereby move this
3 Court for an order setting a new briefing schedule for Defendants' Motion and Partial
4 Motion to Dismiss Complaint.

5 On March 24, 2008, this action was transferred from the United States District
6 Court for the Southern District of Florida to the United States District Court for the
7 Southern District of California. Defendants filed a Motion and Partial Motion to
8 Dismiss the Complaint ("the Motion to Dismiss") on April 28, 2008. This motion was
9 set for hearing on June 23, 2008, at 10:30 a.m., but was ordered vacated by this Court
10 on June 20, 2008.

11 An extension of time to the parties' briefing schedule is necessary and
12 appropriate because Plaintiff is in the process of retaining California counsel to
13 represent them and requires additional time to review the facts of this case and analyze
14 the Motion to Dismiss. Plaintiff is in the process of retaining the law firm of Shustak
15 Frost & Partners, P.C., 401 West A Street, Suite 2300, San Diego, CA 92101 ("the
16 Shustak Firm"). Defendants' counsel and Robert Hill of the Shustak Firm thus have
17 agreed to extend the briefing schedule for the Motion to Dismiss so Plaintiff can
18 formally retain the Shustak Firm as counsel of record, the Shustak Firm can be
19 approved by the Court as counsel of record, and Plaintiff can have adequate time to
20 review the facts of this case and analyze and consider the Motion to Dismiss.

21 Based on the foregoing, Plaintiff and Defendants agree that Plaintiff has until
22 July 9 to file and serve any opposition to the Motion to Dismiss, and that Defendants
23 have until July 21 to file and serve any reply to Plaintiff's opposition. If the Court
24 wishes to entertain oral argument, the counsel for the parties in this case will make
25 themselves available for oral argument on a date after July 28 convenient with the
26 Court.

27 The Shustak Firm is currently unable to sign this Joint Motion on Plaintiff's
28 behalf because the firm has not been formally approved as counsel of record for

1 Plaintiff. Defendants' counsel submits a declaration with this Joint Motion, attesting
2 that Plaintiff has agreed to this continuance and the briefing schedule set forth above.

3 In light of the foregoing, the parties hereby agree to the following:

- 4 (1) Plaintiff has until July 9 to file and serve any opposition to the Motion to
5 Dismiss;
- 6 (2) Defendants have until July 21 to file and serve any reply to Plaintiff's
7 opposition; and
- 8 (3) If the Court wishes to entertain oral argument, the counsel for the parties
9 in this case will make themselves available for oral argument on a date
10 after July 28 convenient with the Court.

11 DATED: June 20, 2008

REED SMITH LLP

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14 By s/Christopher O. Rivas
15 Christopher O. Rivas
16 Attorneys for Defendants
17 DEL MAR DATATRAC, INC,
18 AND FISERV, INC.
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DECLARATION OF CHRISTOPHER O. RIVAS

I, Christopher O. Rivas, declare as follows:

1. I am an associate of the law firm of Reed Smith LLP, which represents defendants Del Mar Datatrac, Inc and Fiserv, Inc. in this matter. I am duly admitted to practice law before all courts in the State of California and am in good standing. If called as a witness, I could and would testify of my own personal knowledge as follows.

2. On June 19, 2008, Robert Hill of the law firm of Shustak Frost & Partners, P.C., 401 West A Street, Suite 2300, San Diego, CA 92101 ("the Shustak Firm") called me and informed me that the Shustak Firm was in the process of being retained as California counsel for Plaintiff in this matter.

3. Mr. Hill represented to me that Plaintiff has only recently become aware that a Motion to Dismiss was filed in this action, and that Plaintiff believes it never received a service copy of the Defendants' motion to dismiss. Moreover, Mr. Hill informed me that since the Shustak Firm has only recently entered discussions with Plaintiff to be retained in this case, he needs additional time to review Defendants' motion to dismiss and the facts underlying this case before he can prepare an opposition to the motion.

4. I am informed and believe that the Shustak Firm has not yet been retained by Plaintiff, and thus cannot sign this joint motion and cannot yet make an appearance in this case. Mr. Hill consents to me being the sole signatory to this joint motion.

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1 I swear under penalty of perjury under the laws of the State of California that
2 the foregoing is true and correct. Executed this 20th day of June, 2008 at Los
3 Angeles, California.

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5 s/Christopher O. Rivas
6 Christopher O. Rivas
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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed in the office of a member of the bar of this court at whose direction the service was made. My business address is REED SMITH, 355 South Grand Avenue, Suite 2900, Los Angeles, CA 90071. On June 20, 2008, I served the following document(s) by the method indicated below:

***JOINT MOTION TO EXTEND BRIEFING SCHEDULE FOR
DEFENDANTS' MOTION AND PARTIAL MOTION TO DISMISS
COMPLAINT; DECLARATION OF CHRISTOPHER O. RIVAS IN
SUPPORT THEREOF***

- ☐ by transmitting via facsimile on this date from fax number 213.457.8080 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 p.m. and was reported complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting fax machine. Service by fax was made by agreement of the parties, confirmed in writing.
- ☒ by causing the document(s) listed above to be placed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service (*via UPS*) for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below. A copy of the consignment slip is attached to this proof of service.
- ☐ by transmitting via e-mail to the parties at the email addresses listed below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the United States that the above is true and correct. Executed on June 20, 2008, at Los Angeles, California.

/s/ Arthur Escalante

Arthur Escalante

SERVICE LIST

American Residential Equities, LLC,
v.
Del Mar DataTrac, Inc. and FISERV, Inc.
Case No. 08-cv-00545-BEN (POR)

SERVED ELECTRONICALLY

NO CM/ECF FILERS

SERVED BY U.S. MAIL

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